

REDACTED –FOR PUBLIC INSPECTION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the matter of)	
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Reliance Communications, Inc.)	
(Filer ID. 823168))	
)	
and)	
)	
Reliance Communications)	WC Docket No. 06-122
International, Inc.)	
(Filer ID. 825316))	
)	
Request for Review of Decision of)	
Universal Service Administrative)	
Company and Request for Waiver of)	
45-Day Revision Deadline)	
)	

**AMENDMENT TO EMERGENCY REQUEST FOR REVIEW AND
REQUEST FOR WAIVER OF USAC 45-DAY REVISION DEADLINE**

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REQUEST FOR WAIVER OF USAC 45-DAY REVISION DEADLINE**

On May 13, 2010, Reliance Communications, Inc. (“RCI”) (Filer ID. 823168) and Reliance Communications International, Inc. (“RCII”) (Filer ID. 825316) submitted a request for review of a decision of the Universal Service Administrative Company (“USAC”) and a request for waiver of the 45-day revision deadline pursuant to Section 54.719(c) of the Commission’s rules.¹ 47 C.F.R. §54.719(c). On June 3, 2010,

¹ *Reliance Communications, Inc. (“RCI”) (Filer ID. 823168) and Reliance Communications International, Inc. (“RCII”) (Filer ID. 825316) Emergency Request for Review of Decision of Universal Service Administrative Company and Request for Waiver of 45-Day Revision Deadline*, WC Docket No. 06-122 (filed May 13, 2010) (“*Request for Review*”).

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representatives of the companies met with the Wireline Competition Bureau staff to discuss the facts underlying the request.² During that meeting, counsel for RCI and RCII addressed questions raised by the Bureau staff and explained that the companies have implemented new procedures to prevent the minor clerical error that led to the events described in the original request.³ On July 27, 2010, RCII learned that USAC was crediting RCII with only [REDACTED] of the [REDACTED] in federal USF contributions that RCII had been assessed in the fourth quarter of 2009 due to the refund calculation methodology USAC employs during the annual true-up process when a filer's projected revenues for a given year as reported in its 499Q reports exceed its actual revenues as reported in the its 499A report for such year.⁴ The application of this methodology resulted in a [REDACTED] shortfall for which RCII remains liable (the "True-Up Shortfall").

RCI and RCII hereby amend the *Request for Review* to request a full credit of the [REDACTED] in USF contributions assessed against RCII in the fourth quarter of 2009 (or an additional credit in the amount of the True-Up Shortfall). The companies also supplement the *Request for Review* to apprise the Commission of the procedures the companies have put into place to prevent minor clerical errors, such as the one that led to the enormous increase in RCII's USF liability, from occurring again. The companies also seek to supplement the record to demonstrate further that good cause exists to grant

² Reliance Communications, Inc. and Reliance Communications International, Inc. Ex Parte Notice, *filed in* WC Docket No. 06-120 (June 3, 2010).

³ *See Request for Review.*

⁴ *See* Attachment A. This attachment is being submitted under a request for confidentiality and is redacted from the publicly available filing.

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the requested waiver and refund because (1) RCII could not have remedied the error that led to the [REDACTED] contribution assessment for the fourth quarter of 2009 prior to the close of the 45-day revision period even if it had contacted USAC immediately after it became aware of such a possibility, and (2) the assessed amounts were so large that they imposed a significant hardship that even a structured payment program could not have adequately addressed.

As of May 2010, all of the principal, interest and penalties associated with RCII's fourth quarter 2009 contribution assessment has been transferred by USAC to the Commission for collection.⁵ The amount showing as owed to the Commission is [REDACTED].⁶ This amount represents the principal USF contribution of [REDACTED] assessed against RCII for the fourth quarter of 2009 and [REDACTED] in late fees associated with RCII's November 1, 2008, 499Q report. Therefore, the balance constitutes accrued interest and penalties in the amount of [REDACTED] as of May 2010.⁷

I. Summary

On July 27, 2007, RCII learned that it would be credited with only [REDACTED] of the [REDACTED] USF contributions it had been assessed in the fourth quarter of 2009

⁵ See *id.*, Attachments 13 and 18 (providing RCII's March and April 2010 USAC invoices showing amounts transferred to the Commission); see also RCII's May 2010 USAC invoice showing the final amount transferred to the Commission, attached hereto as Attachment B. This attachment is being submitted under a request for confidentiality and is redacted from the publicly available filing.

⁶ See March, April and May notices prepared by the Commission, attached hereto as Attachment C. This attachment is being submitted under a request for confidentiality and is redacted from the publicly available filing.

⁷ RCII has not received further notices from the Commission's Office of the Managing Director, and therefore is uncertain if additional interest has accrued.

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as a result of a minor clerical error in its affiliate's August 1, 2009 499Q report.⁸ This [REDACTED] shortfall adds to the hardship imposed on RCII by the current USF reporting system, which has penalized RCII for a minor clerical error committed by its affiliate that neither RCII nor its affiliate were likely to recognize, let alone remedy, within the 45-day revision period. RCII's circumstances demonstrate that good cause exists to grant a waiver of the 45-day revision period and reverse the full [REDACTED] assessment. First, the nature of the error that led to the assessment is unique because it was contained in the 499Q report filed by RCII's affiliate, not in RCII's report. Second, the magnitude of the assessment presents unique circumstances because RCII could not pay such amount at the time it was assessed or even satisfy the requirements for entering into a payment plan with USAC without incurring substantial hardship. Finally, USAC's typical true-up calculation is not designed to address RCII's situation, thereby resulting in a substantial shortfall between the amount RCII was assessed in the fourth quarter of 2009 and the amount it was credited through the true-up process.

II. Supplemental Statement of Facts

In addition to the facts originally set out in the *Request for Review* and which are incorporated herein by reference, RCI and RCII submit the following for the record in this proceeding. On July 22, 2010, RCII received an invoice from USAC indicating that USAC was crediting RCII's account [REDACTED] in USF contributions for the month of July.⁹ In a subsequent email,¹⁰ USAC explained that it was crediting RCII a total of

⁸ See Attachment A.

⁹ See Attachment D. This attachment is being submitted under a request for confidentiality and is redacted from the publicly available filing.

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██████████ as a result of the revenue RCII reported in its 499A report filed on April 1, 2010.¹¹

As shown in the email, USAC calculated RCII's refund as follows. First, it subtracted the sum of RCII's quarterly contribution base amounts (██████████)¹² from the contribution base reported in RCII's Annual 499A Report (██████████). The resulting difference was -██████████. USAC then applied an average of the two lowest contribution factors established in 2009 (.014)¹³ and an average of the associated circularity factors (.096691).¹⁴ The resulting calculation appeared as follows:

██
██

As stated in the *Request for Review*, RCII was assessed ██████████ for the fourth quarter of 2009 based on a clerical error committed by its affiliate, RCI.¹⁵ As a result of the true-up calculation described above, RCII's refund was ██████████ less than the contribution it had been assessed for the fourth quarter of 2009.

¹⁰ See Attachment A.

¹¹ See *Request for Review*, Attachment 6.

¹² See Attachment A.

¹³ For 2009, the two lowest contribution factors were .095 in the first quarter and .113 in the second quarter. A full list of the 2009 quarterly contribution factors and the associated circularity factors is available at USAC's website, www.usac.org/fund-administration/contributors/who-must-contribute/2010-aq-true-up.aspx.

¹⁴ The circularity factors associated with the two lowest quarterly factors for 2009 was .092754 and .100628 respectively. *Id.*

¹⁵ *Request for Review* at 5-8.

III. Relief Sought

RCII requests that the Commission specifically find that RCII is entitled to a full credit in the amount of the USF contribution it was assessed in the fourth quarter of 2009. While RCII has already requested in its *Request for Review* that the “USF contribution amount of [REDACTED] assessed on RCII for the fourth quarter of 2009 be reversed,”¹⁶ RCII now asks that the Commission set aside USAC’s refund calculation and grant the full relief that RCII seeks.

IV. Argument

A. USAC Applied its True-Up Calculation to RCII’s Fourth Quarter Revenue When a Full Refund Should Be Provided

The true-up calculation that USAC applied to RCII was not designed to address RCII’s situation, and therefore, it should not have been applied. Instead, USAC should have credited RCII with the full amount it had been assessed in the fourth quarter of 2009.

The calculation that USAC applied was intended to be applied when “the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual revenue report.”¹⁷ As the companies explained in the *Request for Review*, RCII was assessed [REDACTED] in USF fees for the fourth quarter of 2009 because of an error in the August 1, 2009 499Q report of its affiliate, RCI, not as a result

¹⁶ *Request for Review* at 11.

¹⁷ *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd. 24952, 24972, ¶ 36 (2002) (“2002 Interim Contribution Methodology Order”).

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of an overstatement of RCII's revenue.¹⁸ Because RCI inadvertently omitted its projected revenue from line 120 of its report, USAC determined that the international revenue exemption established in Section 54.706(c) of the Commission's rules no longer applied to RCI and its affiliates, leading USAC to include all of RCII's interstate and international revenue in its USF contribution base.

USAC's mechanical application of its true-up calculation in RCII's case has led to a refund that is [REDACTED] less than the amount RCII was assessed for the fourth quarter of 2009.

B. Good Cause Exists to Grant RCI and RCII's Request for a Waiver of the 45-Day Revision Period and Refund of the Full Fourth Quarter Assessment

Strict application of the 45-day revision rule and the interest and penalties that were assessed against RCII as a result of the minor clerical error in its affiliate RCI's August 1, 2009 499Q report is inconsistent with the public interest because it would impose a significant hardship on a contributor for a minor clerical error that could not have been remedied by such contributor within the 45-day revision period.¹⁹ Moreover, the increase in RCII's USF liability by a factor of 159 that resulted from the minor clerical error constitutes special circumstances and a significant hardship that warrant

¹⁸ *Request for Review* at 5-8.

¹⁹ The Commission may "waive a rule where the particular facts make strict compliance inconsistent with the public interest." *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

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relief.²⁰ Finally, USAC's true-up process has proven inadequate to remedy the significant hardship that has been imposed.

1. RCII Could Not Have Affected USAC's Assessment Even If It Had Contacted USAC Immediately

In hindsight, the facts of this situation may raise the question "Why didn't RCII contact USAC immediately when it learned of the dramatically increased assessment?" This question assumes, however, that RCII could have affected USAC's [REDACTED] quarterly assessment, when, in fact, the opportunity to do so had already passed.²¹ USAC disqualified RCII from the international revenue exemption for which it had always previously qualified based on RCI's August 1, 2009 499Q report. Even if RCII had somehow learned on October 22, 2009, when it received its first fourth quarter invoice from USAC, that RCI had made a clerical error on its August 1, 2009 499Q report, under USAC's rules, RCI would not have been eligible to revise that report because the 45-day revision period expired on September 14, 2009.

In addition, RCII did not simply abandon its responsibilities as a contributor. Upon receiving its November 2009 invoice and concluding that USAC had not made an internal error in its billing process,²² RCII immediately began investigating the cause of the significant increase in its USF assessment. Accordingly, RCII first re-examined its

²⁰ *Aventure Communications Technology, LLC, Form 499 Filer ID: 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline*, Order, 23 FCC Rcd. 10096, n.10 (Wireline Comp. Bur. 2008) ("*Aventure Order*") ("Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.") (citing *Northeast Cellular*, 897 F.2d at 1166).

²¹ *See Request for Review* at 14.

²² *See id.* at 6-7.

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own filings to make sure they were correct. When it concluded that they were, RCII looked for external circumstances that may have affected its USF obligations, most notably the 499Q reports of its affiliates because the Commission conducts the international revenue exemption analysis on a consolidated, rather than individual company, basis. 47 C.F.R. §54.706(c). In this regard, the most apparent changes were the addition of two new affiliates – Reliance Globalcom Services, Inc. (“RGSI”) and Vanco US LLC (“Vanco”).²³ Reviewing the submissions of those companies took time, and still did not reveal the cause of the increase. It was only when RCII had exhausted all obvious avenues of investigation that it contacted USAC and sought an explanation of why its quarterly USF assessment had increased so dramatically.²⁴

Upon finally determining that RCI had made a minor clerical error that led to the dramatic increase in RCII’s USF assessment, RCI promptly filed a revised August 1, 2009 499Q report. RCI and RCII believed that this submission would be accepted and lead USAC to recalculate its quarterly assessment on both companies because the revised 499Q report reflected an increase in the revenue reported by RCI, the entity that submitted the revised 499Q report.²⁵ Moreover, neither RCI nor RCII was notified that

²³ *Id.* at 7.

²⁴ *Id.* at 7-8.

²⁵ During a conversation with a USAC staff member on or around January 20, 2010, RCII’s attorney learned that USAC generally accepts revised 499Q reports if they represent an increase in the filer’s contribution base. *See* Declaration of Petra A. Vorwig, at 1, attached hereto as Attachment E.

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RCI's revised August 1, 2009 499Q report had been rejected until their representatives contacted USAC in April 2010.²⁶

If the 45-day revision rule is applied in this case, the Bureau, in effect, will be punishing a company for (i) a minor clerical error that it did not commit, (ii) acting responsibly in investigating potential causes of the dramatic increase in its USF obligations, and (iii) causing its affiliate to promptly file a revised 499Q report as soon as RCII discovered the source of the problem.

The unfairness of the situation is compounded by the fact that, under the 45-day revision rule, by the time RCII even had any inkling of a problem when it received its first fourth quarter 2009 invoice from USAC in late October 2009, the 45-day revision period had already expired. RCII, therefore, had no opportunity whatsoever to remedy the situation other than to pay the extraordinary amounts set forth on the USAC invoices, whether it understood the basis for such charges, whether such payments would have imposed undue hardship on the company, and whether the charges were ultimately warranted. In RCII's case, the punishment is particularly severe because it will be forced to pay over [REDACTED] in interest and penalties on a quarterly USF assessment that should have been only [REDACTED].²⁷ For all of the foregoing reasons, the requested waiver and reversal of interest and penalties will serve the public interest.

²⁶ See *Request for Review* at 9-10.

²⁷ See *id.* at 13.

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2. *The Nature of the Error that Led to the 15,833% Increase in RCII's Quarterly USF Assessment and the Increase Itself Represents Special Circumstances that Warrant Relief*

RCII's situation is unique from many of the companies that have previously sought a waiver of the 45-day revision period because the error that led to the increased USF assessment was not in its own 499Q report but a report submitted by an affiliate, RCI.²⁸ As a result, RCII did not immediately recognize the error. Furthermore, because the error was in an affiliate's filing, RCII was less likely to discover the error before it received its October 2009 invoice from USAC. However, upon learning of the error in RCI's 499Q report, RCII notified RCI and RCI promptly submitted a revised report.²⁹

The significant increase in quarterly contributions that resulted from RCI's error was similarly unique and imposed a significant hardship on RCII. The USF contribution assessed against RCII for the fourth quarter of 2009, which was 159 times higher than the amount RCII actually owed, was simply too much for RCII to bear.³⁰ While the companies understand that the standard for granting a waiver of the 45-day revision period is high, there must be some point at which the hardship imposed on a company is so onerous and the difference between the assessed amount and the actual amount owed so great that a waiver should be granted. RCII's situation must meet if not exceed this standard. The percentage increase in RCII's assessment – an increase attributable solely to an affiliate's minor clerical error - was significantly greater than that experienced by

²⁸ See *Aventure Order* at ¶2 (noting that Aventure erroneously included all of its revenue, rather than only its USF-eligible revenue, on its own 499Q report, which Aventure recognized upon receiving its January 2008 USAC invoice).

²⁹ *Request for Review* at 8.

³⁰ *Request for Review* at 15-16.

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other contributors requesting similar relief. For example, Aventure Communications Technology, LLC, which was granted a waiver, faced an increase of a factor of 20. The Bureau found that this increase constituted a hardship that supported a waiver.³¹ While RCII did not take the same actions that Aventure took in response to its increased assessment, the sheer size of the increase in RCII's assessment constitutes special circumstances that warrant relief.

3. *The Hardship Imposed by the Increased Assessment Could Not Be Alleviated through a Payment Plan*

Because RCII could not pay the [REDACTED] USAC had assessed and because it believed that its USF liability would be reversed once USAC had processed RCI's revised August 1, 2009 499Q report, RCII chose to wait for USAC to adjust RCII's USF liability so it could pay the correct amount.³² As perhaps the final irony in this case, in light of RCII's actual revenues in 2009, it turns out that RCII had already paid more in USF contributions than it would owe for all of 2009 by the time it received the dramatically increased USAC invoice of October 22, 2009.

While RCII was aware that USAC offers contributors the opportunity to establish payment plans, the obligations attached to those plans would not have alleviated the hardship imposed on RCII. According to the payment plan guidance provided on USAC's website, RCII would be required to pay a minimum of 10% of the debt in order

³¹ *Aventure Order* at ¶5.

³² *Request for Review* at 8-9.

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to be considered for a payment extension plan.³³ Assuming the amount of RCII's debt was limited to the principal, RCII would have had to pay [REDACTED] just to be considered for a payment plan. In addition, while the plan was pending approval by the Commission, RCII also would have been required to pay a minimum of 1/12 (one twelfth) of the remaining debt or [REDACTED] each month.

Therefore, before a payment plan would even be considered by the Commission, RCII would have had to pay [REDACTED], or 15.93 times the amount that should have been assessed for the fourth quarter of 2009.³⁴ It would then have had to pay [REDACTED], or 35.8 times its actual monthly contribution,³⁵ each month the plan remained pending.

Once the plan was approved, RCII then would be charged interest on the unpaid principal balance based on the Wall Street Journal Prime Rate plus 3.5% per annum from the date the debt was incurred until the start date of the payment extension plan.³⁶ RCII would also be subject to administrative charges and interest under the Promissory Note once it was executed.³⁷

³³ See Sample Acknowledgement Letter at 1 ("Sample Acknowledgement Letter"), available at www.usac.org/_res/documents/fund-administration/pdf/Payment%20Extension%20Plans/PP-Acknowledgement-letter-template-SOL.pdf.

³⁴ See *Request for Review* at 13. RCII determined that it should have been assessed [REDACTED] in USF contributions for the fourth quarter of 2009.

³⁵ Having determined that it should have been assessed [REDACTED] for the fourth quarter of 2009, RCII's monthly assessment should have been [REDACTED].

³⁶ See Sample Acknowledgement Letter at 2.

³⁷ *Id.*

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In light of tremendous difference between even the payment plan amounts and RCII's actual USF obligations and RCII's reasonable belief that the principal would be reduced once USAC processed RCI's revised August 1, 2009 499Q report,³⁸ the obligations associated with a payment plan were themselves onerous and would have imposed a substantial hardship on RCII. Furthermore, RCII knew that the principal amount would be reduced once its 499A report was processed. Therefore, RCII was reasonable in waiting until RCI's revised August 1, 2009 499Q report was processed rather than assuming the burden of paying the amounts assessed by USAC or the amounts that would have been owed simply to be considered for a payment plan, both of which represent a hardship that support a grant of waiver in this case.

4. *Unless the Full Amount is Credited, the Hardship Will Not Be Reversed*

As described above, USAC has improperly applied a true-up calculation designed to calculate credits when a filer has overstated its revenue to an assessment that did not result from such an overstatement. The purpose of USAC's true-up calculation, which applies an average of the two lowest calculation factors established during the year, was to create an incentive for filers to carefully estimate their projected revenue during the year. This purpose is not served in RCII's case because RCII did not incorrectly overstate its revenues. Rather, its affiliate made a minor clerical error that led USAC to subject all of RCII's interstate and international revenue to USF contributions. Forcing RCII to accept less than the full amount assessed during the fourth quarter does not

³⁸ *Request for Review* at 8.

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incentivize any filers to exercise greater care, but severely punishes an entity that reported its projected revenue properly.

Additionally, the administrative burden of determining the correct amount to credit RCII is minimal because USAC's records and the companies' filings show that the fourth quarter 2009 assessment was an error, and that amount should be credited to RCII.

V. The Reliance Group Companies Have Adopted a New 499Q Review Procedure

RCII and its affiliates have instituted a new review procedure for their 499Q reports to minimize the likelihood that a similar clerical error will occur in the future. In the first round of internal review, all four companies, RCI, RCII, RGSi and Vanco, submit their draft 499Q reports to their parent company, Reliance Communications Limited, for review. Upon approval, outside counsel reviews each draft report for completeness and compares it to past filings to identify any discrepancies. Once outside counsel has confirmed that the forms are complete and do not include any obvious errors, each company files its 499Q report with USAC.

VI. Conclusion

RCI and RCII request that the Bureau consider the foregoing in reviewing their request to waive the 45-day revision deadline and thereby reverse USAC's decision to reject RCI's revised August 1, 2009 499Q report and to reverse the full amount of the USF contributions and related penalties and interest levied on RCII as a result of calculations of the companies' USF obligations based on the clerical error contained in RCI's original August 1, 2009 499Q report.

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Respectfully submitted,

/s/

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International, Inc.*

August 20, 2010

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ATTACHMENT A

Redacted

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ATTACHMENT B

Redacted

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ATTACHMENT C

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ATTACHMENT D

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ATTACHMENT E

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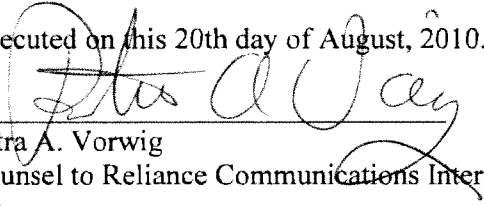
In the matter of)	
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Reliance Communications, Inc. ("RCI"))	
(Filer ID. 823168))	
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and)	
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Reliance Communications)	WC Docket No. 06-122
International, Inc. ("RCII"))	
(Filer ID. 825316))	
)	
Emergency Request for Review of)	Declaration of Petra A. Vorwig
Decision of Universal Service)	
Administrative Company ("USAC"))	
and Request for Waiver of 45-Day)	
Revision Deadline)	
)	

I, Petra A. Vorwig, state as follows:

1. I am outside legal counsel for both Reliance Communications International, Inc. ("RCII") and Reliance Communications, Inc. ("RCI").
2. This Declaration is made in support of RCII and RCI's Amendment to Emergency Request for Review and Request for Waiver of USAC 45-Day Revision Deadline.
3. On or around January 20, 2010, I had a telephone conversation with a USAC staff member regarding the clerical error RCI made in its August 1, 2009 499Q report.
4. During that conversation, I learned that USAC generally accepts revised 499Q reports if they represent an increase in the filer's contribution base.

I hereby declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on this 20th day of August, 2010.



Petra A. Vorwig
Counsel to Reliance Communications International, Inc. and Reliance Communications,
Inc.

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CERTIFICATE OF SERVICE

On this 20th day of August, 2010, I certify that I caused the foregoing to be (1) served via hand delivery on Claude Aiken (claude.aiken@fcc.gov) and Charles Tyler (charles.tyler@fcc.gov) of the Telecommunications Access Policy Division, Wireline Competition Bureau; (2) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 06-122 in redacted form; (3) served via hand delivery on the following parties in redacted form:

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/s/
Petra A. Vorwig